



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 244**

**[Docket DARS-2019-0024]**

**RIN 0750-AJ48**

**Defense Federal Acquisition Regulation Supplement: Contractor Purchasing System Review Threshold (DFARS Case 2017-D038)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a DoD contractor purchasing system review dollar threshold that provides a regulatory basis for allowing DoD personnel to support other essential priorities and missions of greater contractual risk, while reducing regulatory impact on contractors.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2017-D038, using any of the following methods:

o Federal eRulemaking Portal: <http://www.regulations.gov>. Search for "DFARS Case 2017-D038." Select "Comment Now" and follow the instructions to submit a comment. Please include your name, company name (if any), and "DFARS Case 2017-D038" on any attached document.

o Email: [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2017-D038 in the subject line of the message.

o Fax: 571-372-6094.

o Mail: Defense Acquisition Regulations System, Attn: Kimberly Bass, OUSD(A&S)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Instructions: Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Kimberly Bass, telephone 571-372-6174.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This proposed rule implements a recommendation from the Defense Contract Management Agency (DCMA) to raise the contractor purchasing system review (CPSR) threshold at Federal

Acquisition Regulation 44.302(a) from \$25 million to \$50 million. Currently, FAR 44.302(a) requires the administrative contracting officer (ACO) to determine whether a contractor's sales to the Government are expected to exceed \$25 million during the next 12 months and, if so, perform a review to determine if a CPSR is needed. The ACO uses this dollar threshold in conjunction with the surveillance criteria cited at FAR 44.302(a), i.e., contractor past performance, and the volume, complexity, and dollar value of subcontracts. DCMA performs the preponderance of DoD CPSRs. Competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to Part 12 are excluded from this requirement.

FAR 44.302(a) specifically authorizes the head of the agency responsible for contract administration to raise or lower the \$25 million CPSR threshold if it is considered to be in the Government's best interest. The dollar threshold of \$25 million cited at FAR 44.302(a) has been unchanged since 1996. In 2016, the DCMA CPSR Group conducted an analysis to determine if raising the CPSR threshold would be beneficial. Based on the Group's findings, it was determined that adjusting the threshold upward to \$50 million would appropriately account for inflation, reduce burden on small contractors, and allow a more efficient

and effective use of CSPR resources to review larger contractors where more taxpayer dollars are at risk.

## **II. Discussion and Analysis**

This rule proposes to amend DFARS 244.302, Requirements, to establish within the DFARS a DoD CPSR dollar threshold of \$50 million. With this threshold in place, it is estimated that DCMA ACOs can reduce the number of contractor reviews by approximately 20 percent, while reducing by only 2% the value of contract dollars covered by CSPRs. Thus, the Government will be adequately protected by the \$50 million threshold.

## **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule does not add any new provisions or clauses or impact any existing provisions or clauses. The rule merely increases the DoD dollar threshold for conducting CPSRs to \$50 million.

## **IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and

benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **V. Executive Order 13771**

This rule is not expected to be subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

#### **VI. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., based on a review of historical data concerning the purchasing system, business system program. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a DoD contractor purchasing system review (CPSR) dollar threshold.

The objective of this rule is to create a new DFARS section at 244.302 to establish a CPSR dollar threshold of \$50 million. The threshold will be used in conjunction with other

surveillance criteria cited at Federal Acquisition Regulation (FAR) 44.302(a), to include contractor past performance and the volume, complexity, and dollar value of subcontracts. The proposed rule establishes a DoD dollar threshold of \$50 million for a formal CPSR; in effect, raising the current surveillance threshold of \$25 million cited at FAR 44.302(a) for DoD contractors.

In 2014, there were there were 667 unique entities for which administrative contracting officers (ACO) had recorded approved CPSR decisions in the Contract Business Analysis Repository. A 20% reduction in the number of CPSRs is expected to result from increasing the CPSR threshold from \$25 million to \$50 million for a total reduction of approximately 133 firms no longer meeting the criteria for a CPSR review. Contractor purchasing systems are eligible for a comprehensive follow-on review every three years. Based on this three-year review cycle, approximately 45 fewer contractors would be reviewed each year ( $133 \text{ firms} / 3\text{-year cycle} = 44.3$ , rounded to 45 fewer reviews conducted each year). Of the 45 entities, it is estimated that 35 of these contractors are large businesses and 10 are small entities.

The \$50 million dollar threshold should reduce the compliance burden for approximately 133 contractors, and permit a more

prudent and efficient use of resources, prioritizing surveillance to the larger firms.

For the approximately 133 contractors affected by this rule, there could be additional requirements for those firms to request consent to contract from the ACO, pursuant to FAR clause 52.244-2, Subcontracts. It is estimated that the annual number of consent to contract requests are approximately 12 per contractor.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no significant alternatives to the proposed rule that accomplish the stated objectives.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2017-D038), in correspondence.

## **VII. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The rule contains information collection requirements cleared by the Office of Management and Budget under OMB control number 9000-0149, entitled "Subcontract Consent and Contractor's Purchasing System Review." The current clearance for OMB control number 9000-0149 already accounts for the reduction in

burden associated with raising the DoD threshold for conducting CPSRs.

**List of Subjects in 48 CFR Part 244**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR Part 244 is proposed to be amended as follows:

**PART 244—SUBCONTRACTING POLICIES AND PROCEDURES**

1. The authority citation for 48 CFR part 244 continues to read as follows:

**Authority:** 41 U.S.C. 1303 ad 48 CFR chapter 1

**PART 244—SUBCONTRACTING POLICIES AND PROCEDURES**

2. Section 244.302 is added to read as follows:

**244.302 Requirements.**

(a) In lieu of the threshold at FAR 44.302(a), the ACO shall determine the need for a CPSR if a contractor's sales to the Government are expected to exceed \$50 million during the next 12 months.

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